

Exemption; improvisational repertory theater and workshops. A nonprofit organization operating an improvisational repertory theater and workshops in the study and production of improvisational theater does not qualify as a nonprofit educational organization exempt from tax; however, the organization's workshops, which meet the requirements relating to faculty, curriculum, and enrolled student body, qualify as a school operated as an activity of an exempt organization and are exempt.

Advice has been requested whether sales of taxable fuels and articles and amounts paid for communication services furnished to the organization described below come within the excise tax exemptions for nonprofit educational organizations provided by sections 4041(g)(4), 4221(a)(5), and 4253(j) of the Internal Revenue Code of 1954.

The organization was established as a nonprofit corporation to operate an improvisational repertory theater and also, in connection therewith, to conduct workshops for the production and study of improvisational theater. The purpose of this form of theater is to encourage spontaneous audience participation in dramatic performances. The theater is open to the general public, as an entertainment medium, subject to a charge for admission. The workshops offer a variety of regularly scheduled educational courses in the improvisational method of acting and the enrolled students are taught by the organization's instructors in its theater facility. The workshops are recognized by a local college for credit towards a degree.

The organization is exempt from Federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3).

Section 4041(g)(4) of the Code provides that under regulations prescribed by the Secretary, no special fuels excise tax shall be imposed with respect to the sale of any taxable liquid to a nonprofit educational organization for its exclusive use, or with respect to the use by a nonprofit educational organization of any liquid as a fuel.

Section 4221(a)(5) of the Code provides that under regulations prescribed by the Secretary no manufacturers excise tax shall be imposed with respect to the sale by the manufacturer of a taxable article to a nonprofit educational organization for its exclusive use, but only if such use is to occur before any other use.

Section 4253(j) of the Code provides that, under regulations prescribed by the Secretary no tax shall be imposed under section 4251 on any amount paid by a nonprofit educational organization for services or facilities furnished to such organization.

The above sections also include in the term 'nonprofit educational organization' a school operated as an activity of an organization described in section 501(c)(3) of the Code that is exempt from income tax under section 501(a) if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

Under the provisions of sections 4041(g), 4221(d)(5), and 4253(j) of the Code, the term 'nonprofit educational organization' means an educational organization described in section 170(b)(1)(A)(ii) that is exempt from income tax under section 501(a). Section 170(b)(1)(A)(ii) describes an educational organization as an organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. Section 1.170A-9(b) 1 of the Income Tax Regulations, and section 148.1-4(b) of the Temporary Regulations under the Excise Technical Changes Act of 1958 provide that such nonprofit educational organization must have as its primary function the presentation of formal instruction.

That an organization may have been granted exemption from Federal income tax as an organization described in section 501(c)(3) of the Code does not, of itself, determine the applicability of the exemptions from the aforementioned excise taxes. In order for these exemptions to apply, the organization must meet the prescribed requirements of section 170(b)(1)(A)(ii) and the regulations to come within the meaning of a 'nonprofit educational organization.'

In the instant case the organization's primary function is not the presentation of formal instruction but the operation of an improvisational theater for entertainment purposes. See Rev. Rul. 74-46, 1974-1 C.B. 304, which holds that a nonprofit organization engaged solely in 'involvement drama' or 'participation theater' is not a nonprofit educational organization even though it is engaged in an activity that in many respects is educational in nature.

Accordingly, the organization itself does not meet the prescribed requirements under the regulations to qualify as a nonprofit educational organization as that term is used in sections 4041(g), 4221(d)(5) and 4253(j), of the Code. Therefore, except as provided below, the exemptions from the special fuels and manufacturers excise taxes provided by sections 4041(g)(4) and 4221(a)(5), and the exemption from the communication taxes provided by section 4253(j), do not apply to sales of taxable liquids, articles, or communication services to the organization.

Rev. Rul. 75-516, 1975-2 C.B. 417, holds that a training

program meeting the prescribed requirements of faculty, curriculum, and enrolled student body qualifies as an exempt school operated as an activity of a nonprofit organization described in section 501(c)(3) of the Code that is exempt from income tax under section 501(a), even though the nonprofit organization itself is held not to qualify as a school for the excise tax exemption.

In the instant case, the scheduled workshops of the organization meet the requirements of the statute and regulations, in that they normally have a regular curriculum and enrolled student body in attendance at a designated place where instruction is normally provided by a regular faculty. Therefore, the organization is conducting a 'school operated as an activity' of an exempt organization within the meaning of the statute and regulations.

Accordingly, the exemptions from the special fuels and manufacturers excise taxes provided by section 4041 and 4221(a)(5), and the exemption from the communications taxes provided by section 4253(j), apply to sales of taxable liquids and articles, and on amounts paid for communication services furnished to the organization for the exclusive use of the workshops. These exemptions are subject to the registration and evidence, or exemption certificate, requirements of section 148.1 of the temporary regulations, as amended, relating to nonprofit educational organizations.